

ACT 58

H.B. NO. 2111

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend various portions of title 24 of the Hawaii Revised Statutes, to update and improve existing provisions and promote consumer protection, including:

- (1) Adding the National Association of Insurance Commissioners Travel Insurance Model Law definition of “travel insurance” and removing outdated and obsolete limited lines products for travel insurance vending machines or selling certain policies as a promotional device to improve newspaper circulation;
- (2) Amending the regulation of third party administrators by excluding dental insurers and dental service corporations and adding audited financial statements as part of required annual report filings; and
- (3) Adopting the revised National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation, which requires producers to act in the best interest of the consumer when making a recommendation of an annuity and requires insurers to establish and maintain a system to supervise recommendations.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding four new sections to part VII of article 10D to be appropriately designated and to read as follows:

“§431:10D-A Care obligation of insurers and producers. (a) The producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

- (1) Know the consumer’s financial situation, insurance needs, and financial objectives;
 - (2) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (3) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - (4) Communicate the basis or bases of the recommendation.
- (b) To fulfill the obligation under subsection (a), a producer shall:
- (1) Make reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity;
 - (2) Consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs, and financial objectives; provided that

this paragraph shall not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure; and

- (3) Have a reasonable basis to believe that the consumer would benefit from certain features of the annuity, such as annuitization, death, or living benefit, or other insurance-related features.

(c) This section shall not be construed to create a fiduciary obligation or relationship and shall only create a regulatory obligation as established in this part.

(d) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features shall be those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives; provided that the level of importance of each factor may vary depending on the facts and circumstances of a particular case; provided further that each factor shall not be considered in isolation.

- (e) A producer's obligation under subsection (a):

- (1) Shall apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any;
- (2) Shall not be construed to mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended; and
- (3) Shall not be construed to mean the producer has ongoing monitoring obligations under this section; provided that an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(f) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, including taking into consideration whether:

- (1) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;
- (2) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
- (3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty months.

(g) Nothing in this part shall be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this State, including but not limited to any securities license to fulfill the duties and obligations contained in this part; provided that the producer shall not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

§431:10D-B Disclosure obligation of insurers and producers. (a) Before the recommendation or sale of an annuity, the producer shall prominently

disclose to the consumer on a form substantially similar to Appendix A of the Spring 2020, National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation:

- (1) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
 - (2) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
 - (A) Fixed annuities;
 - (B) Fixed indexed annuities;
 - (C) Variable annuities;
 - (D) Life insurance;
 - (E) Mutual funds;
 - (F) Stocks and bonds; and
 - (G) Certificates of deposit;
 - (3) An affirmative statement describing the insurers for whom the producer is authorized, contracted, appointed, or otherwise able to sell insurance products, using the following descriptions:
 - (A) From one insurer;
 - (B) From two or more insurers; or
 - (C) From two or more insurers, although primarily contracted with one insurer;
 - (4) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other producer or by fee as a result of a contract for advice or consulting services; and
 - (5) A notice of the consumer's right to request additional information regarding cash compensation as described in subsection (b).
- (b) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:
- (1) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
 - (2) Whether the cash compensation is a one-time or multiple occurrence amount, and, if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.
- (c) Before or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; any annual fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in non-guaranteed elements of the annuity; insurance and investment components; and market risk.

§431:10D-C Conflicts of interest obligation of insurers and producers.

A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

§431:10D-D Documentation obligation of insurers and producers. (a)

A producer shall at the time of recommendation or sale:

- (1) Make a written record of any recommendation and the basis for the recommendation subject to this part;
- (2) Obtain a consumer signed statement on a form substantially similar to Appendix B of the Spring 2020, National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation, documenting:
 - (A) A consumer's refusal to provide the consumer profile information, if any; and
 - (B) A consumer's understanding of the ramifications of not providing the consumer's consumer profile information or providing insufficient consumer profile information; and
- (3) Obtain a consumer signed statement on a form substantially similar to Appendix C of the Spring 2020, National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation, acknowledging the annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(b) Any requirement applicable to a producer under this part shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence."

SECTION 3. Section 431:9A-107.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other provision of this article, the commissioner may issue:

- ~~(1) A limited license to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of accident and health or sickness insurance or baggage insurance on personal effects;~~
- ~~(2) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;~~
- ~~(3) A limited license to any individual who sells policies of accident and health or sickness insurance as a promotional device to improve the circulation of a newspaper in this State;]~~
- (1) A limited license to persons selling travel insurance. For purposes of this paragraph, "travel insurance" means insurance coverage for personal risks incident to planned travel, including:
 - (A) Interruption or cancellation of trip or event;
 - (B) Loss of baggage or personal effects;
 - (C) Damages to accommodations or rental vehicles;
 - (D) Sickness, accident, disability, or death occurring during travel;
 - (E) Emergency evacuation;
 - (F) Repatriation of remains; or
 - (G) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the commissioner.

“Travel insurance” does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than six months, including those working or residing overseas as an expatriate, or any other insurance product that requires a specific insurance producer license;

- [(4)] (2) A limited line credit insurance producer license to any individual who sells, solicits, or negotiates limited line credit insurance; or
- [(5)] (3) A limited license to any owner of a self-service storage facility, as defined in section 507-61, to sell stored property insurance, as defined in section 431:9A-171.”

SECTION 4. Section 431:9J-101, Hawaii Revised Statutes, is amended by amending the definition of “administrator” or “third party administrator” to read as follows:

““Administrator” or “third party administrator” means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with self-insurance, stop-loss, or life insurance coverage, accident and health or sickness insurance coverage, or article 1 of chapter 432, except the following:

- (1) An employer on behalf of its employees or the employees of a subsidiary or an affiliated corporation of the employer;
- (2) A union on behalf of its members;
- (3) An insurer authorized to transact insurance in this State with respect to a policy lawfully issued and delivered in and pursuant to the laws of this State or another state;
- (4) A dental insurer holding a certificate of authority pursuant to chapter 432G;
- (5) A dental service corporation established under chapter 423;
- [(4)] (6) A producer licensed to sell life insurance coverage or accident and health or sickness insurance coverage in this State, whose activities are limited exclusively to the sale of insurance;
- [(5)] (7) A managing general agent licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;
- [(6)] (8) An individual adjuster licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;
- [(7)] (9) An individual who adjusts or settles claims in the normal course of practice or employment as an attorney at law and who does not collect charges or premiums in connection with life insurance coverage or accident and health or sickness insurance coverage;
- [(8)] (10) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- [(9)] (11) A trust established in conformity with title 29 United States Code section 186 and trustees, agents, and employees acting under that trust;
- [(10)] (12) A trust exempt from taxation under title 26 United States Code section 501(a) and trustees and employees acting under that trust, or a custodian and the custodian’s agents and employees acting under a custodian account that meets the requirements of title 26 United States Code section 401(f);
- [(11)] (13) A financial institution subject to supervision or examination by federal or state banking authorities, or a mortgage lender that

- collects and remits premiums to licensed producers or authorized insurers in connection with loan payments;
- [42] (14) A credit card issuing company advancing for and collecting premiums or charges from its credit card holders who have authorized collection; provided that the company does not adjust or settle claims; and
- [43] (15) A person who acts solely as an administrator of one or more employee benefit plans established by an employer or an employee organization.”

SECTION 5. Section 431:9J-103, Hawaii Revised Statutes, is amended to read as follows:

“[§431:9J-103] Surety bond required. ~~[Prior to] (a) Before~~ the issuance of the administrator license, the administrator shall file with the commissioner, and maintain in force while so licensed, a surety bond of at least \$100,000, in the form and penal sum acceptable to the commissioner, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was an administrator, unless the commissioner has given prior written consent. The surety bond shall be undertaken and may be enforced in the name of “Commissioner of Insurance, State of Hawaii”.

(b) For each subsequent annual report filing, the surety bond amount shall be at least \$100,000 and filed in accordance with section 431:9J-112.”

SECTION 6. Section 431:9J-112, Hawaii Revised Statutes, is amended to read as follows:

“[§431:9J-112] Annual report required. (a) An administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, in a form and manner prescribed by the commissioner.

(b) The annual report shall include ~~the~~:

- (1) The names and addresses of all insurers with which the administrator had an agreement during the preceding calendar year[-];
- (2) A renewal certificate for the surety bond required in section 431:9J-103 and an updated surety bond form, if needed; and
- (3) An audited financial statement prepared by an independent certified public accountant.”

SECTION 7. Chapter 431, article 10D, part VII, Hawaii Revised Statutes, is amended to read as follows:

“[PART VII.] SUIABILITY IN ANNUITY TRANSACTIONS

§431:10D-621 Scope. (a) This part applies to any recommendation ~~[to purchase, exchange, or replace] or sale of~~ an annuity ~~[made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange, or replacement recommended].~~

(b) This part does not apply to transactions involving:

- (1) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this part; or
- (2) Contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement ~~[and] Income Security Act[;] of 1974, P.L. 93-406, as amended;~~

- (B) A plan described by ~~[sections]~~ section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code of 1986, as amended, if established or maintained by an employer;
 - (C) A ~~[governmental]~~ government plan or church plan defined in section 414 of the Internal Revenue Code of 1986, as amended, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization subject to section 457 of the Internal Revenue Code of 1986, as amended; or
 - (D) A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - ~~[(E)]~~ (3) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - ~~[(F)]~~ (4) Formal prepaid funeral contracts.
- (c) Nothing in this part shall be construed to affect in any manner any provision of chapter 485A.

§431:10D-622 Definitions. For the purposes of this part:

“Annuity” means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

“Approved continuing education course provider” means an individual or entity that is approved to offer continuing education courses pursuant to article 9A.

“Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

“Comparable standards” means:

- (1) With respect to broker-dealers and registered representatives of broker-dealers, applicable United States Securities and Exchange Commission and Financial Industry Regulatory Authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including but not limited to Regulation Best Interest, title 17 Code of Federal Regulations section 240.151-1, and any amendments or successor regulations thereto;
- (2) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on the investment advisers or investment adviser representatives by contract or under the Rules and Regulations, Investment Company Act of 1940, title 17 Code of Federal Regulations part 270, or applicable state securities law, including but not limited to the Form ADV and interpretations; and
- (3) With respect to fiduciaries or plan fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974, P.L. 93-406, or the Internal Revenue Code of 1986, as amended, and any amendments or successor statutes thereto.

“Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:

- (1) Age;

- (2) Annual income;
- (3) Financial situation and needs, including debts and other obligations;
- (4) Financial experience;
- (5) Insurance needs;
- (6) Financial objectives;
- (7) Intended use of the annuity;
- (8) Financial times horizon;
- (9) Existing assets or financial products, including investment, annuity, and insurance holdings;
- (10) Liquidity needs;
- (11) Liquid net worth;
- (12) Risk tolerance, including but not limited to willingness to accept non-guaranteed elements in the annuity;
- (13) Financial resources used to fund the annuity; and
- (14) Tax status.

“Continuing education credit” means one continuing education credit hour. For the purposes of this ~~[paragraph,]~~ definition, “credit hour” has the same meaning as set forth in section 431:9A-102.

“Financial professional” means a producer that is regulated and acting as:

- (1) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;
- (2) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or
- (3) A plan fiduciary under section 3(21) of the Employee Retirement Income Security Act of 1974, P.L. 93-406, or fiduciary under section 4975(E)(3) of the Internal Revenue Code of 1986, as amended, or any amendments or successor statutes thereto.

~~“Insurance producer” means a person required to be licensed under the laws of this State to sell, solicit, or negotiate insurance, including annuities.]~~

“Insurer” means a company required to be licensed under the laws of this State to provide insurance products, including annuities.

“Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

“Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. “Material conflict of interest” does not include cash compensation or non-cash compensation.

“Non-cash compensation” means any form of compensation that is not cash compensation, including but not limited to health insurance, office rent, office support, and retirement benefits.

“Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element shall be considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

“Producer” means a person or entity required to be licensed under the laws of this State to sell, solicit, or negotiate insurance, including annuities. “Producer” includes an insurer where no producer is involved.

“Recommendation” means advice provided by ~~[an insurancee]~~ a produc-
~~er[, or an insurer where no producer is involved,]~~

[results] was intended to result or does result in a purchase, an exchange, or a replacement of an annuity in accordance with that advice. “Recommendation” does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

“Replacement” means a transaction ~~[for the purchase of a new policy or contract that]~~ in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer [if there is no producer, knows or has reason to know will cause an existing policy or contract to be:] whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or may be any of the following:

- (1) Terminated, lapsed, forfeited, or surrendered, partially surrendered, or assigned to the replacing insurer;
- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended to effect a reduction in either benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a finance purchase.

[“Suitability information” means information about the consumer that is reasonably related to the determination of the appropriateness of a recommendation, including the following:

- (1) Age;
- (2) Annual income;
- (3) Financial situation and needs, including the financial resources used for funding the annuity at issue;
- (4) Financial experience;
- (5) Financial objectives;
- (6) Intended use of the annuity;
- (7) Financial time horizon;
- (8) Existing assets, including investment and life insurance holdings;
- (9) Liquidity needs;
- (10) Liquid net worth;
- (11) Risk tolerance; and
- (12) Tax status.]

§431:10D-623 Duties of insurers and [insurance] producers. [(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer based on the facts, including the consumer’s suitability information, disclosed by the consumer about the consumer’s investments, other insurance products, financial situation, and needs and that:

- (1) The consumer has been reasonably informed of the various features of the annuity, including the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;

- (2) The consumer would benefit from certain features of the annuity, including tax-deferred growth, annuitization, or death or living benefit;
- (3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer; and
- (4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable for the particular consumer taking into consideration whether:
 - (A) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;
 - (B) The consumer would benefit from product enhancements and improvements; and
 - (C) The consumer has had another annuity exchange or replacement, particularly an exchange or replacement within the preceding thirty-six months.

(b) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(c) Except as permitted under subsection (d), an insurer shall not issue an annuity that has been recommended to a consumer unless the insurer has a reasonable basis to believe the annuity is suitable for the particular consumer based on the consumer's suitability information.] (a) A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if the producer has satisfied the obligations regarding care, disclosure, conflict of interest, and documentation as set forth in this part.

[(d)(1)] (b)(1) Except as provided under paragraph (2), [neither an insurance] a producer [nor an insurer] shall have [any] no obligation to a consumer under section 431:10D-A related to any annuity transaction if:

- (A) No recommendation is made;
- (B) A recommendation was made based on materially inaccurate information provided by the consumer;
- (C) A consumer refuses to provide relevant [suitability] consumer profile information and the annuity transaction is not recommended; or
- (D) A consumer decides to enter into an annuity transaction that is not based on a recommendation of [the insurer or] the [insurance] producer[; and].

- (2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

[(e) An insurance producer or a representative of the insurer, where no insurance producer is involved, shall at the time of sale:

- (1) Make a record of any recommendation subject to this section;

- (2) Obtain a signed statement from the consumer documenting the consumer's refusal to provide suitability information, if applicable; and
- (3) Obtain a signed statement from the consumer acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(f) (c) Except as permitted under subsection (b), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer profile information.

(d) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its [insurance] producers' compliance with this part, including:

- (1) Reasonable procedures to inform the insurer's [insurance] producers of the requirements of this part, including incorporating the requirements of this part into relevant [insurance] producer training manuals;
- (2) Standards for [insurance] producer product training, including reasonable procedures to require its [insurance] producers to comply with section 431:10D-626;
- (3) Product-specific training and training materials that explain all material features of its annuity products to its [insurance] producers;
- (4) Procedures for the review of each recommendation prior to the issuance of an annuity to ensure [that] there is a reasonable basis to determine [the suitability of a recommendation that may include additional review of selected transactions through electronic, physical, or other means; provided that the insurer may specify criteria for selection of transactions for additional review;] that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including but not limited to physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- (5) Reasonable procedures to detect recommendations that are not [suitable, including] in compliance with subsections (b), (g), and (h), and sections 431:10D-A, 431:10D-B, 431:10D-C, and 431:10D-D. The reasonable procedures may include confirmation of [consumer suitability] the consumer profile information, systematic consumer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring; provided that nothing in this paragraph shall prevent an insurer applying sampling procedures or confirming [suitability] the consumer profile information or other required information under this section after issuance or delivery of the annuity;
- (6) Reasonable procedures to assess, before or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;
- (7) Reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(8) Reasonable procedures to identify and eliminate any sales contests, sale quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this paragraph shall not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees; provided that those benefits are not based upon the volume of sales of a specific annuity within a limited period of time;

[(6)] (9) Annual review and testing of the supervision system ~~[which]~~ that shall be documented in a written report to the insurer's senior management, including the senior manager responsible for audit functions, to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any;

[(7)] (10) Procedures for monitoring contracts and, as appropriate, conducting audits to assure that any contracted functions are properly performed; and

[(8)] (11) Annual certification based on reasonable facts from a senior manager who has responsibility for contracted functions that the contracted functions are properly performed.

~~[(e)]~~ (e) An insurer may contract for performance of any functions, including maintenance of procedures, required by subsection ~~[(f)(1) to (6);]~~ (d)(1) to (9); provided that an insurer shall be responsible for taking any appropriate corrective action and may be subject to sanctions and penalties pursuant to section 431:10D-624 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection ~~[(f)-]~~ (d).

~~[(h)]~~ (f) An insurer [is] ~~shall~~ not be required to include in its system of supervision ~~[an insurancee];~~

(1) A producer's recommendations to consumers of products other than the annuities offered by the insurer[-]; or

(2) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

~~[(i)]~~ ~~An insurance producer shall not~~ (g) Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer's request for confirmation of [suitability] ~~the consumer profile~~ information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

~~[(j)]~~ ~~Sales~~ (h) Recommendations and sales of annuities made in compliance with [requirements of the Financial Industry Regulatory Authority or its successor agency pertaining to suitability and supervision of annuity transactions] comparable standards shall satisfy the requirements of this [section; provided that an insurer that issues an annuity subject to this part shall:] part. This section shall apply to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue. Nothing in this subsection shall limit the commissioner's ability to investigate and enforce the provisions of this part. Nothing in this subsection shall limit the insurer's obligation to comply with subsection (c); provided that the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(i) For subsection (h) to apply, an insurer shall:

- (1) Monitor the ~~[sales by entities registered as broker-dealers with the Financial Industry Regulatory Authority of annuities issued by the insurer]~~ relevant conduct of the financial professional seeking to rely on subsection (h) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws using information collected in the normal course of an insurer's business; and
- (2) Provide to the entity ~~[subject to paragraph (1) with any]~~ responsible for supervising the financial professional seeking to rely on subsection (h), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably ~~[necessary]~~ appropriate to assist the entity ~~[in maintaining the]~~ to maintain its supervision system ~~[required by the Financial Industry Regulatory Authority.~~

~~This subsection shall apply to sales of variable annuities and fixed annuities where suitability and supervision requirements are similar to those applied to variable annuity sales. Nothing in this subsection shall limit the insurance commissioner's ability to enforce this part].~~

§431:10D-624 Compliance mitigation; penalties~~[-]; enforcement.~~ (a)

An insurer shall be responsible for compliance with this part. If a violation occurs because of the action or inaction of the insurer or its ~~[insurance]~~ producer, the commissioner may order:

- (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this part by the [insurer's] insurer, an entity contracted to perform the insurer's supervisory duties, or [its insurance producer's violation of this part:] by the producer;
- (2) A business entity, general agency, independent agency, or the ~~[insurance]~~ producer to take reasonably appropriate corrective action for any consumer harmed by the ~~[insurance]~~ producer's violation of this part; and
- (3) Appropriate penalties and sanctions.

(b) Any penalty applicable to an insurer, a managing general agent, independent agencies, or a producer under article 13 of chapter 431 may be applicable to a violation of this part; provided that penalties may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or if the violation was not part of a pattern or practice.

(c) The authority to enforce compliance with this part is vested exclusively with the commissioner.

§431:10D-625 Recordkeeping. Insurers, managing general agents, independent agencies, and ~~[insurance]~~ producers shall maintain or make available to the commissioner records of the information collected from the consumer; disclosures made to the consumer, including summaries of oral disclosures; and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction has been completed by the insurer. An insurer may maintain documentation on behalf of ~~[an insurance]~~ a producer.

§431:10D-626 [Insurance producer] Producer training. (a) ~~[An insurance]~~ A producer shall not solicit the sale of an annuity product unless the ~~[insurance]~~ producer has adequate knowledge of the product to recommend the annuity and the ~~[insurance]~~ producer is in compliance with the insurer's standards for product training. ~~[An insurance]~~ A producer may rely on insurer-

provided, product-specific training standards and materials to comply with this subsection.

(b) ~~[Any insurance]~~ A producer who is authorized to sell annuity products on or before ~~[January 31, 2012,]~~ December 31, 2022, shall complete by ~~[January 31, 2012,]~~ July 1, 2023, a one-time training course on annuity products meeting the requirements of subsection (d)[-], by completing either:

(1) A new four-credit training course approved by the commissioner after December 31, 2022; or

(2) An additional one-credit training course approved by the commissioner and provided by an approved education provider on appropriate sales practices, replacement, and disclosure requirements under this part.

(c) ~~[An insurance]~~ A producer who obtains a life or variable life and variable annuity products line of authority after ~~[January 31, 2012,]~~ December 31, 2022, shall not engage in the sale of annuities until the ~~[insurance]~~ producer has completed training meeting the requirements of subsection (d).

(d) The training required by this section shall be approved by the commissioner, be conducted by an approved continuing education course provider, and meet the following requirements:

(1) The minimum length of the training shall be sufficient to qualify for at least four continuing education credits;

(2) The training shall include information on the following topics:

(A) The types and various classifications of annuities available on the market;

(B) Identification of the parties to an annuity;

(C) How fixed, variable, and indexed annuity contract provisions affect consumers;

(D) The application of income taxation to qualified and non-qualified annuities;

(E) The primary uses of annuities; and

(F) Appropriate standard of conduct, sales practices, replacement, and disclosure requirements; and

(3) The training shall not include any marketing information for products of any particular insurer or training on sales techniques.

(e) A provider of an annuity training course intending to comply with this section shall register as an approved continuing education course provider in this State and comply with the rules and guidelines applicable to ~~[insurance]~~ producer continuing education courses as set forth in article 9A.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with article 9A.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with article 9A.

(h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this section in this State.

(i) The satisfaction of the components of the training requirements of any course or courses with components determined by the commissioner to be substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this section.

~~[(4)]~~ (i) An insurer shall verify that ~~[an insurance]~~ the producer has completed the annuity training course required by this section before allowing the producer to sell an annuity product for the insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of

the training course or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved continuing education course providers.”

SECTION 8. The insurance commissioner may delay the enforcement of sections 3 and 6 of this Act until no later than March 31, 2023.

SECTION 9. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 2022; provided that sections 2 and 7 shall take effect on January 1, 2023.

(Approved June 17, 2022.)

Note

1. Edited pursuant to HRS §23G-16.5.